

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 11/22/2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAYLANDO D. NEWBY,

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant

23-CV-4780 (BCM)

SIDEKE FOGO,

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant.

PRETRIAL ORDER

BARBARA MOSES, United States Magistrate Judge.

The following schedule shall control the remaining proceedings in these consolidated actions:

1. Expert Discovery. As discussed on the record during the November 21, 2024 conference, the deadline for expert discovery is hereby EXTENDED to **December 23, 2024**, for the limited purpose of permitting the United States to take Dr. Daly's deposition regarding his expected testimony concerning plaintiff Newby. Because Newby did not disclose Dr. Daly as an expert witness until long after the deadline for such disclosures expired (*see* Dkt. 53), and because the delay was not "substantially justified," Fed. R. Civ. P. 37(c)(1), plaintiff Newby must bear the costs of the deposition, including any witness fee. *See* Fed. R. Civ. P. 37(c)(1)(A).
2. Settlement. Within two weeks of the date of this order, the parties must meet and confer in real time (*e.g.*, in person or by telephone) for at least 30 minutes to discuss settlement. Plaintiffs must make concrete settlement demands, and all parties must be prepared to

discuss the settlement value of this action realistically and in good faith. No later than **December 23, 2024**, the parties must file a joint status letter confirming that the required conference took place and advising the Court whether a judicially-supervised settlement conference would be productive. If the parties wish to be referred to a different magistrate judge for that purpose, they shall so state.

3. Joint Pretrial Order. No later than **January 13, 2025**, the parties must file on ECF their proposed Joint Pretrial Order (JPTO) in accordance with this Court's Individual Rules of Practice, *and* email a courtesy copy of the JPTO, in Word format, to chambers (Moses_NYSDChambers@nysd.uscourts.gov). The parties are reminded that preparation of the JPTO requires close cooperation between counsel, who must exchange information and drafts well in advance of the due date in order to meet that due date. The JPTO must include, among other things, "[a]ll stipulations or agreed statements of fact or law." Moses Ind. Prac. § 4(b)(vii). The JPTO must also include witness lists, deposition designations, and exhibit lists. *Id.* §§ 4(b)(viii)-(x). It is ordinarily the plaintiffs' responsibility to coordinate with defendant's counsel, to file the joint document on ECF, and to advise the Court promptly of any difficulties encountered in the preparation process.
4. Statements of the Elements or Proposed Findings. No later than **February 3, 2025**, each party must file on ECF a statement of the elements of each claim, counterclaim, cross-claim, defense, or remedy involving such party (including elements as to which the parties have agreed in the JPTO), together with a summary of the facts that will be relied upon to establish each element and to establish that party's entitlement to damages or other relief (including facts to which the parties have stipulated in the JPTO). In the alternative, a party may submit proposed findings of fact and conclusions of law, which likewise must discuss

the elements of each relevant claim, counterclaim, cross-claim, defense, and remedy. Any party that believes it will be useful may also, by the same date, file a pretrial memorandum of law.

5. Motions in Limine. Any motions to exclude evidence at trial must be filed no later than **February 3, 2025**, and must include copies of the challenged exhibits or testimony. Responses must be filed no later than **February 10, 2025**.
6. Trial Exhibits and Deposition Testimony. No later than **February 17, 2025**, each party must submit to the Court two copies of a neatly tabbed binder containing:
 - a. A list of that party's proposed exhibits, ordered sequentially in accordance with their pre-marked exhibit numbers,¹ including a brief description of each exhibit (e.g., "Police Report," "Photo of Damage to Car," "Treatment Records from Dr. Smith"), a notation indicating whether any other party has raised an objection to the exhibit, and a space for the Court to record whether and when the exhibit is admitted into evidence;
 - b. Copies of that parties' proposed exhibits,² pre-marked and ordered sequentially;
 - c. A list of the deposition testimony (by witness, page, and line numbers) that that party intends to offer in his or its case in chief (*i.e.*, not for impeachment), followed by notation indicating whether any other party has raised an objection to the testimony, and a space for the Court to record whether and when the testimony is admitted into evidence;

¹ Plaintiff Newby shall mark his exhibits "P-1," P-2," etc. Plaintiff Fogo shall mark his exhibits P-100," P-101," etc. The United States shall mark its exhibits "D-1," "D-2," etc.

² In color, if the original is a color photograph, a multi-colored document, or the like.

- d. Copies of the designated deposition testimony, including the first page and the signature page of the relevant transcript; and
 - e. Copies of any charts, graphs, or other demonstrative evidence prepared by that party for use at trial.³
7. Final Pretrial Conference. The parties must appear for a final pretrial conference on **February 24, 2025, at 10:00 a.m.** Each party's principal trial counsel must attend, must be prepared to discuss any remaining pretrial matters, and must be fully informed as to the availability of that party's witnesses during the week of March 3, 2025, including any potential scheduling difficulties.
8. Trial. Trial will commence on **March 3, 2025, at 9:30 a.m.**, in Courtroom 20A at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007. The parties must bring their original pre-marked exhibits with them to trial, and plaintiffs must be prepared to call their first witness that morning.

Dated: New York, New York
November 22, 2024

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge

³ If an exhibit or demonstrative is too bulky to be tabbed into the binder, it may be submitted separately, clearly marked.